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DR. PARAMSOTHY MURUGASU

v.

UNIVERSITY OF MALAYA

HIGH COURT MALAYA, KUALA LUMPUR

HASHIM YEOP SANI J

b

[CIVIL SUIT NO. A 2 OF 1982]

4 JUNE 1982

c

LABOUR LAW: *Employment - Conditions of service - Issue of service circular after date of appointment - Passing of additional examination made prerequisite for confirmation - Whether service circular invalid on ground that it conflicted with terms of contract and was in violation of constitution of University - Effect of application for extension of probationary period - effect of examination application form marked "without prejudice".*

d

The plaintiff was a lecturer with the University of Malaya. He was appointed lecturer in the Radiology Department in the Faculty of Medicine by letter dated 18th May 1978. The offer of appointment was subject to a number of conditions. The first condition was that the appointment was permanent and pensionable but subject to a probationary period of three years. Another condition was that "subject to satisfactory service, passing the prescribed examination and fulfilling other relevant conditions" the plaintiff would be eligible to be considered for confirmation at the end of the probationary period. There were other conditions including conditions (ix) which stipulated that the plaintiff was at all times subject to the constitution of the University and the statutes and regulations in force in the University. The plaintiff commenced service with the University on 22 August 1978.

e

In October 1978 the University issued a circular letter called Service Circular No. 2 of 1978 dated 9 October 1978. That service circular required all officers in the group to which the plaintiff belonged who were still on probation on or after 1 January 1978 to pass an examination called the *Peperiksaan Am Kerajaan* in addition to any other examination as a prerequisite for confirmation in their post. The plaintiff was sent a letter dated 13 May 1981 by the University, drawing his attention to the facts that his probationary period was coming to an end, that he had not passed the Bahasa Malaysia examination and that he had not passed the *Peperiksaan Am Kerajaan* examination.

*f**g*

The letter also noted that it had been decided by the University Council that all staff who could not fulfil the conditions specified for confirmation should apply for extension of the probationary period with an explanation as to why they could not fulfil the required conditions.

In June 1981 the plaintiff applied for an extension of the probationary period with his explanation as to why he had not passed the examinations. The University Council, by a letter dated 14th August, 1981, extended the plaintiffs probationary period to 21 August 82 to enable him to pass the examinations.

h

In November 1981 the plaintiff submitted his application to sit the government examination, but writing at the top of the application form: "Application under protest without prejudice and admission of liability." He affirmed his signature against the statement.

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The plaintiff later sought for an order to restrain the University from implementing the service circular 2 of 1978 on him. He also sought for a declaration that the service circular was invalid on the ground that it conflicted with the terms and conditions of his Contract which required him to pass only the Bahasa Malaysia examination and was in violation of s. 45(3)(b) of the Constitution of the University as the circular was not an authorised method of imposing a term or condition of service on an employee of the University.

Held:

[1] The service circular No. 2 of 1978, issued by the University was not an unauthorised method of prescribing the terms and conditions of service of employees of the University. The first limb of s. 45(3) of the Constitution of the University was explicit and from the language used the power of the Council to prescribe terms and conditions of employment was very clear.

[2] The service circular did not in any way violate the provision of s. 45(3)(b) of the Constitution of the University since the first limb of s. 45(3) empowered the University Council to impose terms and conditions of employment.

[3] Section 45(3)(b) of the Constitution prohibited the imposition of terms and conditions inconsistent with the provisions of any Statutes, Acts or Regulations only. Since on the material date no such provisions existed the University Council was completely free to prescribe the *Peperiksaan Am* examination by way of a Service Circular.

[4] The service circular did not impose an additional term to the contract of the plaintiff. The natural and logical construction of the words “prescribed examinations” appearing in Clause (ii) of the letter of appointment included examinations as might from time to time be prescribed by the University Council. This construction was also consistent with condition (ix) in the letter of appointment relating to amendments and adaptations of regulations and practices to be made from time to time by the University Council.

[5] Even if the service circular constituted an alteration in the terms of the contract the plaintiff must be deemed to have accepted the additional condition when he voluntarily applied for the extension of his probationary period.

[6] The purported “without prejudice” clause written on his application form was of no legal significance. The rule which excludes documents marked “without prejudice” has no application unless there is a dispute or negotiation and an offer for settlement of the dispute or negotiation. [*Re Daintrey Ex parte Holt* [1893] 2 QB 116; *Re River Steamer Co., Mitchell's Claim*, LR 6 Ch App 822, p. 832] In any case, the application form was addressed not to the University but to the Public Services Department which had nothing to do with the employment of the plaintiff but only conducted the examination.

[7] The University was a corporation, a separate legal entity from the public service and section 45(3) of the constitution was self-contained so far as the powers of the University Council over terms and conditions of service of its employees were concerned.

Application dismissed.

Case referred to:

Re Daintrey Ex parte Holt [1893] 2 QB 116

For Plaintiff - Mr. S. Radhakrishnan

For Defendant - Mr. C.V. Dass

(Digest Form Only)

Also found at [1982] CLJ 434